

6-1-2001

## Section 504 and Catholic Schools

Nikki L. Schweinbeck

Follow this and additional works at: <https://digitalcommons.lmu.edu/ce>

### Recommended Citation

Schweinbeck, N. L. (2001). Section 504 and Catholic Schools. *Journal of Catholic Education*, 4 (4). <http://dx.doi.org/10.15365/joce.0404042013>

This Focus Section Article is brought to you for free with open access by the School of Education at Digital Commons at Loyola Marymount University and Loyola Law School. It has been accepted for publication in Catholic Education: A Journal of Inquiry and Practice by the journal's editorial board and has been published on the web by an authorized administrator of Digital Commons at Loyola Marymount University and Loyola Law School. For more information about Digital Commons, please contact [digitalcommons@lmu.edu](mailto:digitalcommons@lmu.edu). To contact the editorial board of Catholic Education: A Journal of Inquiry and Practice, please email [CatholicEdJournal@lmu.edu](mailto:CatholicEdJournal@lmu.edu).

---

## SECTION 504 AND CATHOLIC SCHOOLS

NIKKI L. SCHWEINBECK

*Spalding University*

*This article explains the implications of Section 504 of the Rehabilitation Act of 1973 for Catholic schools educating students with disabilities and special needs. The author delineates the types of disabilities covered; accommodations required under the law; suggestions for teachers, parents, administrators, and pastors; and the need for ongoing staff development to empower faculty to be responsive to the needs of diverse learners.*

Children with disabilities in our society have faced not only a constant battle for social acceptance but also many frustrating legal battles for educational equality in the school setting. The issue of civil rights of students with special needs has been highly contested in the public education arena since the 1970s; the moral and religious issue of special needs students in Catholic schools has become one of major importance in the 1990s. For too long, Catholic schools were seen as the last bastions of educating average and above-average students; recent times have produced a paradigm shift: The United States Catholic bishops, in their 1990 statement *In Support of Catholic Elementary and Secondary Schools* (National Conference of Catholic Bishops), charged Catholic educators to value the individual and to recognize student diversity, reaffirming the 1972 pastoral *To Teach as Jesus Did* (National Conference of Catholic Bishops). Catholic educators have tried to follow the directives of Church leaders, but have not always known the legal parameters involved in accepting and accommodating special needs students; this has often led to frustrated classroom teachers, disappointed parents, and administrators involved in grievance processes.

Three federal laws prohibit discrimination or require special services for students with disabilities: the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act of 1973. IDEA is an affirmative action statute that is enforced by the Department of Education. It applies to school systems that request funds for delivering special education services to students; it requires Free and Public Education (FAPE) and therefore does not apply directly to Catholic schools.

ADA is an antidiscrimination civil rights act regulated by the U.S. Department of Justice. It currently governs any facility with 15 or more employees, and does not require that any federal funding be involved, so private facilities are covered. However, there is a specific exemption of religious-affiliated schools; so it does not affect educational programs in Catholic schools.

Section 504 is a nondiscrimination statute overseen by the Office for Civil Rights; it does require that the facility receive federal financial assistance, but there is no exemption for religious schools. It protects not only students with learning disabilities, but also those with other special needs ranging from obesity and shyness to phobias; at last count there were 460 disabilities listed under its umbrella of protection.

There would seem to be a need for greater knowledge of legal obligations in the accommodation of special needs students in Catholic schools; this article focuses on the civil rights statute that has most impact in this area: Section 504 of the Rehabilitation Act of 1973.

Section 504 began as a five-line add-on to a 454-page document dealing with handicapped veterans; today it has expanded into C.F.R. Part 104, a document of 66 pages. Case law citing Section 504 has proliferated (Zirkel, 1993); court decisions have delivered remedies including damages, injunctive relief, and attorney fees.

In *Board of Education of Nassau County v. Arline* (1987), the U.S. Supreme Court pointed out that the purpose of Section 504 was to ensure that handicapped individuals not be denied jobs or other benefits because of the prejudice, attitudes, or ignorance of others; this concept demands that schools undertake programs for faculty and staff concerning how, by whom, and in what manner "reasonable accommodations" will be adopted for special needs students. Policymakers at the diocesan level must be aware of this statute and its mandates as they plan and develop new educational initiatives.

In light of the need for a better understanding of the legal issues surrounding the delivery of accommodations under Section 504 to special needs children who attend Catholic schools, this article addresses the legislative background, the wording of the actual statute, and some practical suggestions for the classroom. The first section deals with the evolution of the statute in the legislative process, since this is a law that almost never was. The second

part reviews the three-pronged definition of Section 504 and discusses Office of Civil Rights (OCR) findings on parent complaints. The third section covers eligibility and obligations of private schools in accommodating students. Part four lists and discusses what types of disabilities should be accommodated by private schools. The last sections offer some practical accommodations and suggestions for teacher and staff training so that the mandates of Section 504 can be met.

## LEGISLATIVE HISTORY

The initial interest of Congress in the rehabilitation needs of the disabled was centered on returning World War I veterans. Proposals in 1917 were first directed to "soldier rehabilitation" but were later expanded to the industrially disabled. This interest led to a vocational rehabilitation program known as the Smith-Fess Act, which was signed into law in 1920 by President Woodrow Wilson. The program initially offered vocational services only for the physically handicapped, but subsequent amendments brought changes:

1. The 1942 amendment expanded coverage to provide services for "mentally ill" and "mentally retarded" individuals.
2. The 1954 amendment provided improved financing to states.
3. The 1965 and 1968 amendments expanded rehabilitation programs to provide services for deaf-blind youths and families of the disabled. (Senate Report No. 93-318)

Early in 1972 Congress began reviewing the Vocational Rehabilitation Act for revision after President Nixon issued a Memorandum of Disapproval. After hearings and revisions, both the Senate and House passed the act by unanimous voice vote on March 15, 1973. On March 27, 1973, President Nixon vetoed the bill yet again; his veto message accused Congress of passing a fiscally irresponsible, badly constructed bill.

In 1971, Representative Charles Vanik had introduced an amendment to Title VI of the Civil Rights Act of 1964: Section 601 of Title VI provides in part: "No person...shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" [42 U.S.C. Section 2000(d)]. This amendment extended its prohibition beyond race and ethnic origin discrimination to discrimination on the basis of handicap.

The following year Senators Hubert Humphrey and Charles Perry introduced a similar amendment; after the *Mills v. Board of Education* decision, the Vanik-Humphrey proposals were added to the bill that was finally passed as the Rehabilitation Act of 1973, thus blending a rehabilitation act with a civil rights measure.

The nondiscrimination amendment became the final section of the act: Section 504, which provides that "No otherwise qualified handicapped individual...shall solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." Before this final section was added, the act was limited to employment; schools continued to ignore the ramifications of the amendment by interpreting the act under the employment venue only and thus failed to respond to its broader coverage (Salomone, 1986). Senator Humphrey, in his original description of the bill that was to become Section 504, stressed the failure of public schools to serve children who were classed as mentally retarded, who had physical disabilities, or who were considered emotionally disturbed.

However, in 1974, new amendments clarified the definition of handicapped to include "physically or mentally handicapped children who may be denied admission to federally supported school systems on the basis of their handicap" (Section 504). Even with the new amendment refining Section 504, the Department of Health, Education, and Welfare failed to issue rules and regulations until forced to do so by a court order (Salomone, 1986).

Since Congress had not included a method for enforcing Section 504 in the Rehabilitation Act of 1973, the basic remedy used in enforcing Title VI and Title IX was applied to Section 504 by executive order issued in 1976 by President Jimmy Carter:

Whenever the appropriate department or agency determines...that any recipient of, or applicant for, Federal financial assistance is in noncompliance...compliance with Section 504 may be effected by the suspension or termination of, or refusal to award Federal financial assistance.... (Section 504)

In 1979, the Office for Civil Rights (OCR) was created within the Department of Education to administer regulations and to publish letters of findings (LOF) answering parent complaints against school systems that failed to comply with Section 504 mandates.

It is interesting to note that this earliest and most broad-based statute protecting students with disabilities began as a rehabilitation program for soldiers; was vetoed by President Nixon; was repassed and vetoed again; and finally emerged, through an amendment tacked on at the last minute, as a far-reaching prohibition against discrimination in the school setting.

## DEFINITION

Over the years, Section 504 has come to protect those who fall under its three-pronged definition of disability: 1) those who have a physical impairment which substantially limits one or more major life activities; 2) those

who have a history of, or have been classified as having, a mental or physical impairment that substantially limits one or more major life activities; 3) those regarded as having such an impairment... (A) has a physical or mental impairment that does not substantially limit major life activities but is treated as having such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment (e.g., persons suffering from AIDS); or (C) has none of the impairments defined but is treated by a recipient as having such an impairment (e.g., someone who appears retarded and is treated as such). Life activities are caring for oneself, hearing, walking, seeing, breathing, learning, or working.

Zirkel (1994) states that OCR has interpreted the first prong as covering a variety of students including but extending beyond those eligible under IDEA. The most frequent and recent examples are students with ADHD or Tourette's Syndrome (*OCR Letter of Findings, 1990-1998*) where the disorder has a substantial effect on learning. On the other hand, students and employees who are current users of drugs have been largely removed from the protection of Section 504. An OCR Memorandum (1991) states:

First, the definition of individuals with handicaps is narrowed to exclude persons... "currently engaging in the illegal use of drugs...." Second, this exclusionary language is limited to allow former users or those participating in drug rehabilitation programs to qualify as persons with handicaps. Third, local educational agencies are explicitly authorized to take disciplinary action against handicapped students using drugs or alcohol to the same extent as they may take action against nonhandicapped students, and the due process safeguards required by 34 C.F.R. 104.36 are specifically declared inappropriate to such proceedings. (App. 3:1)

School administrators often raise questions about dealing with the drug exemption and the drug rehab exception. OCR recently spoke to one question when it clarified its position that if a school expels a student who was covered by Section 504 due to drug abuse and the student completes a supervised rehab program before the end of expulsion, the school is not required to reinstate the student, unless it would do so for a disabled student in a similar situation (*Letter to Zirkel, 1995*).

The second prong has not been used frequently, but it includes students who have been misclassified through faulty assessment or committee placement decisions.

The third prong adds coverage to students who have AIDS or other infectious diseases, such as hepatitis B. The courts have strongly ruled in favor of this interpretation. In *Jeffrey S. v. State Board of Education* (1989), a second-grade student who was infected with AIDS but showed no outward symptoms still had accompanying medical problems. His mother requested accommo-

dations to combat his numerous absences. When the school refused to make any changes because he did not appear weakened or ill, the parent sued and the court found that indeed, even though Jeffrey S. was asymptomatic, he was not to be discriminated against in his educational program.

This prong also requires that an impairment be determined without regard to mitigating measures such as medicines or assistive devices. For example, an individual with epilepsy would be considered to have an impairment even if the symptoms of the disorder were completely controlled by medication.

Under this definition, Section 504 does apply to "any program or activity receiving Federal financial assistance" (29 U.S.C. Section 794), including private schools. Section 504 regulations at 34 C.F.R. Section 104.39 set out specific obligations for private education programs. Sectarian as well as non-sectarian schools are covered.

Section 504 regulations at 34 C.F.R. Section 104.39(h) define federal financial assistance as "any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department of Education provides or otherwise makes available assistance in the form of: 1) funds...."

Under this law, schools are considered recipients if they directly receive federal funds or their staff or students receive services and benefits provided indirectly by federal funds. Some examples might include:

- Free and reduced lunch program
- Federal milk program
- Federal energy grant
- Title I Remedial Education
- Title II Eisenhower Professional Development
- Title III Technology
- Title IV Drug free schools
- Title VI Innovative programs

In the case of *Hunt v. St. Peter School* (1997), a Catholic school serving kindergarten through grade 8 had to comply with Section 504 because it received federal funds each year through Title I and the National Free Lunch and Breakfast Programs.

The federal agency responsible for determining school compliance with eligibility standards is the Office for Civil Rights; its regulations prohibit discrimination on the basis of disability in programs and activities by all entities receiving federal financial assistance, including private sectarian schools (OCR, 1992).

To lodge a complaint with OCR, a parent or student need only send a letter to a regional office, addressing individual student, class, or systemic issues. The complaint must be filed within 180 days of the alleged discrimi-

nation, although the regional director has the authority to waive the time limit in some circumstances.

The OCR will conduct an investigation of the complaint through data collection and written responses to questions, and may even conduct an on-site review. A Letter of Finding will then be issued, either with a "no violation" conclusion or identification of violations and specification of corrective actions. Failure to implement the requested corrections may lead to an administrative hearing, with the possibility that federal education funds may be terminated.

The good thing about OCR findings is that individual teachers and schools are not mentioned by name in published accounts, only the school district and superintendent. The areas most often suggested for remediation are: teacher and staff training in classroom accommodations; dispensing medication for ADHD students; food preparation for students with diabetes and allergies; and accommodating other health conditions such as asthma and Crohn's Disease.

In an important OCR ruling, *Rialto (CA) United School District* (1989), a parent complained after a teacher slapped her son in the face for "acting out." The parent had informed the school that her child was diagnosed ADHD. Investigating the complaint, OCR found that the majority of school personnel were ignorant of Section 504 requirements and accommodation techniques. The OCR mandated several strategies for meeting the needs of attention deficit students and conducted a system-wide workshop for teachers and administrators.

The ruling in the *Fairfield-Suisun (CA) Unified School District* (1989) case is an example of one of the first rulings on the importance of medication for ADHD students. This ruling pertained to a student with ADHD who was not properly monitored when his medication was given (he was allowed to take it out at the water fountain). The student was later expelled for fighting with another student and for kicking a teacher despite evidence that the child had ADHD. In this instance, OCR found ADHD to be a condition that qualified a person as handicapped under Section 504, especially when the condition is not properly controlled by medication. The school was required to provide related services to the student under Section 504.

The issue of time out for disruptive behavior was discussed in *McCracken County (KY) School District* (1991). OCR pointed out that Section 504 students should not be placed in a time-out area where they are at any time not in sight of the responsible staff person; they should not be placed in time out for an excessive amount of time; and time out should not be excessive in terms of frequency. Isolation is never recommended as a technique for discipline.

Finally, in a *Letter of Inquiry* dated June 14, 1994, an advocate for children's education in Florida addresses several questions concerning OCR's



rulings on ADHD; OCR's *Letter of Response* (1994) contains succinct legal information with specific statutory citations. This would be an excellent document for every school to have on file for general information; the section on possible legal sanctions for staff who refuse to implement ADHD interventions is very useful.

The insufficient delivery of services to students suffering from juvenile diabetes and allergies is a frequent area of parental complaint; failure to monitor diet, medicate, and provide insulin injections has caused school districts to be required to develop better policies in delivering related services to health-impaired students [*Bement (IL) Community Unit School No. 5*, 1989].

It should be noted that OCR investigations often lead to parental decisions to carry their complaints to the courts; the OCR investigations are so thorough and the letters of response listing Section 504 noncompliance issues so concise that the journey to the courthouse is an easy one. Often the parents will petition the courts for private rights of action under Section 504, even when school districts have made the needed changes. The OCR is a powerful tool to be used for children's rights; parents and advocates are very aware of its authority; teachers and administrators must also be cognizant of its role.

## ELIGIBILITY

According to Section 504, a qualified handicapped person must be: 1) of an age during which nonhandicapped persons are provided such services; 2) of any age during which it is mandatory under state law to provide such services to handicapped persons; or 3) a person to whom a state is required to provide a free appropriate public education under Section 612 of the Education of the Handicapped Act (34 C.F.R. Section 104.3(k)).

Section 504 covers adults as well as school-aged children. In *Rothschild v. Grottenthaler* (1990), the hearing-impaired parents of a child without disabilities were found entitled to sign-language interpreter services at all school-initiated conferences and other essential activities. Section 504 may cover children with infectious diseases who do not require special education, at least in gaining them admission to the classroom (*Ray v. School District*, 1987). In this case, young brothers who had contracted AIDS from blood transfusions were denied admission into school solely because of their medical condition. The court ruled that they were eligible for Section 504 protection and could attend school.

Children with ADD or ADHD also have different rights under this statute. In several rulings, OCR regional offices have found that school districts violated Section 504 by applying ordinary discipline procedures to these children and failing to provide them supportive services. For example, in *Brittan (CA) School District* (1990), OCR ruled on the case of a nine-year-old boy in regular education classes who exhibited disruptive and defiant

behavior that led to repeated suspensions—75 in one school year. An evaluation found him not eligible for special services even though he was labeled ADHD. OCR ruled that the school district had not complied with Section 504 regulations on evaluation standards and suspensions since his handicap and individual education needs were not addressed in either process.

Following are examples of areas of eligibility protected by Section 504:

- students with communicable diseases (e.g., hepatitis)
- students with temporary disabilities arising from accidents who may need short-term hospitalization or homebound recovery (remember, the impairment must impact one of life's major activities; a right-handed student who breaks his or her left hand may not be eligible for accommodations)
- students with allergies or asthma
- students who are drug or alcohol addicted, as long as they are not currently using illegal drugs
- students with environmental illnesses
- parents with disabilities

A very important factor in the area of eligibility is the consensus of courts that disabled students who are considered qualified under Section 504 are more limited where private schools are concerned. In addition, the range of obligations of a private school is not as extensive as it is for public schools.

All school-age students with disabilities under 34 C.F.R. Section 104.3(j) are considered qualified and entitled to Section 504 protection and a full range of services in public schools. On the other hand, private schools are considered providers of "other services" under 34 C.F.R. Section 104.3(k)(4). Generally, private schools establish essential eligibility requirements that are more selective than being of school age and blessed with parents who can pay the tuition.

For those students with disabilities who are qualified, 34 C.F.R. Section 104.39(c) delineates the private school's obligations to them under Section 504. All covered private schools must comply with the following sections of Subpart D:

- 34 C.F.R. Section 104.34: The least restrictive environment mandate and comparable facilities requirement.
- 34 C.F.R. Section 104.37: Equal opportunity to participate in nonacademic and extracurricular services and activities, including counseling services, physical education, and athletics.

Those private schools offering special education programs must also follow the requirements for evaluation and placement, as well as procedural safeguards, making their obligations almost co-extensive with public schools. If a private school, for example, advertised special classes for ADHD stu-

dents or special programs for learning disabled students, then under Section 504 mandates personnel would be legally responsible for evaluating students and making placement decisions in committee process. Procedural safeguards as far as parent notification and written permission, specific learning plans, and change of placement processes become much more stringent.

## TYPES OF DISABILITIES COVERED

In making decisions about accepting students, Catholic school personnel should have a general understanding of what conditions are defined under Section 504. Physical and mental impairments are broadly defined and include: (a) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, and endocrine; or (b) any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional and mental illness, and specific learning disabilities.

Section 504 also covers hidden physical or mental impairments that are not readily apparent to others. They include such conditions and diseases as diabetes, epilepsy, and allergies. The *Section 504 Compliance Advisor* (2000) has a section on psychiatric disabilities of school-aged children: how to recognize symptoms and how to accommodate in the classroom; childhood depression is specifically mentioned. Hidden disabilities such as low vision, poor hearing, heart disease, or chronic illness may not be obvious; parental request for accommodations is usually necessary in these cases—school personnel are not required to screen actively for these disabilities. Chronic illness involves recurring and long-term impairments such as diabetes, kidney and liver disease, high blood pressure, and ulcers and is covered by Section 504.

It is interesting to note that the first prong of the definition for Section 504 specifies that only physical and mental handicaps are included; thus, environmental, cultural, or economic disadvantages are not covered. Other exceptions noted are homosexuality, kleptomania, transvestism, and pyromania.

According to a legal opinion from the Attorney General, drug addicts and alcoholics are considered disabled if their impairment limits one or more of their major life activities and if they are in recovery (Leyton, 1991). This would appear to put the onus on school personnel to: 1) evaluate whether the drug or alcohol abuse has substantially impaired the student's learning, and 2) determine if the impaired student is successfully participating in a supervised drug rehab program. Regardless of whether the student is determined to

be eligible under Section 504 due to substance abuse, if the student is caught possessing or using drugs or alcohol schools may enforce the same disciplinary procedures that they apply to other students (Zirkel, 1997).

## ACCOMMODATIONS

Under Section 504, Catholic schools are held to a standard of accepting those students with disabilities that they can serve in a regular classroom with "minor adjustments" (Gorn, 1998). Neither OCR regulations nor active case law have established a definition; but it would appear that minor adjustments can best be thought of as similar to "reasonable accommodations."

Section 504 regulations at 34 C.F.R. Section 104.39(a) prohibit private schools from rejecting applicants or disenrolling students whose disabilities could be accommodated with "minor adjustments." There will be times when a parent's concept of "minor adjustments" might be viewed by the school as major; OCR's answer of complaints about when a proposed adjustment crosses the line has been the subject of a limited number of published Letters of Findings and court decisions.

*Benedictine (GA) Military School* (OCR, 1995) was an OCR ruling that implied "minor adjustments" is the equivalent of "related aids and services." In that *Letter of Finding* (1998), OCR suggested that minor adjustments for a student with a learning disability could include tutorial services, extra time to take exams, special seating arrangements, or similar noncontent modifications.

In a case concerning the disenrollment for disciplinary reasons of a student with a disability, the court in *Thomas v. Davidson Academy* (M.D. Tenn. 1994) ruled that private schools have an obligation to make adjustments throughout a student's attendance, including modification of standards for disenrollment.

The high school student in *Davidson Academy* suffered from an autoimmune disease, which made her susceptible to life-threatening bleeding. When she cut herself with an etching knife during art class, she became hysterical and began to shout obscenities when she was told she could not call home. Her behavior upset both staff and other students; she continued to curse while receiving medical treatment in the nurse's office. The principal informed the student that she would be expelled for the last semester of her senior year as a result of her disruptive behavior.

The parents sued in court and won; she was allowed to complete her senior year at the academy. The court ruled that the need to accommodate the student's disability was a Section 504 obligation because the student's behavior was clearly related to her disability. Therefore, the school should have modified its disciplinary code to prevent expulsion as a consequence of the student's behavior.

As Catholic schools enroll more students with disabilities, personnel should be trained in accommodating disabilities throughout the school, from the classroom to the playground. The following accommodations are listed as examples of ways in which Section 504 handicaps may be successfully addressed within the regular educational environment.

## **COMMUNICATION**

The teacher may want to:

- develop a daily or weekly journal between parent and school
- schedule more frequent parent-teacher meetings
- provide parents with a duplicate set of tests
- network with other staff
- schedule building team meetings
- maintain ongoing communication with the building principal
- communicate with outside agencies

## **ORGANIZATION AND MANAGEMENT**

The teacher may want to:

- modify the class schedule
- allow the student more time to walk the hallways
- supply a study carrel in the classroom
- change the student's seat
- increase or decrease opportunity for movement in the classroom
- reduce stimuli
- discuss health parameters with parents
- contact lunchroom if menu changes are requested

## **ALTERNATIVE TEACHING STRATEGIES**

The teacher may need to:

- adjust testing procedures (especially length of time)
- administer quizzes orally and tape record answers
- individualize classroom and homework assignments
- utilize technology (computers, calculators)
- discontinue the use of dittos
- vary materials (visual, tactile, auditory)
- adjust reading level of material (especially social studies and science)

## **GRADING PROCEDURES**

The teacher may want to:

- mark acceptable work, not mistakes
- point out reversals and transpositions of letters for correction, not count them wrong
- avoid placing the student under pressure of time or competition
- accept typed homework assignments
- quietly repeat directions to the student after they have been given to class
- allow the student to dictate answers to exams on cassette

It can be seen that the antidiscrimination goal of Section 504 covers several approaches. Section 504 applies to differences in treatment between handicapped and nonhandicapped individuals; it strives to level the playing field for disabled students. For example, it could be discrimination for a school to provide shower facilities for regular students to use after gym class but not to provide accessible facilities to enable students with disabilities to shower.

Schools also have the duty to afford handicapped students an equal opportunity to participate in nonacademic services and activities with other students to the maximum extent possible. Denying a student with ADHD the opportunity to go on educational field trips with his or her class would be discrimination; OCR has made several findings on this subject. Not allowing a learning disabled student to participate in athletics because of stringent grade requirements would certainly lend itself to discriminatory practices. Section 504 students must also be allowed to participate in special interest groups (photography, for example) and clubs sponsored by the school.

If a Catholic school enrolls a special needs student and finds that adjustments might place added expenses on the school, Section 504 does allow administrators to place a surcharge on tuition; but it does constrain the school from setting prohibitively high fees for students with disabilities simply to discourage attendance.

Section 104.39(b) of the Section 504 regulations provides that a private school may not charge more for the provision of the appropriate services to students, "except to the extent that any additional charge is justified by a substantial increase in cost." Some adjustments that might call for an increase in fees could be: enlarging printed material on a copier; using multi-modal instruction (i.e., visual and auditory); individual tutoring on a daily basis; student's exclusive use of technology.

It would be worthwhile to note that the following are not minor adjustments:

- establishing a new program to address the disability
- hiring additional personnel to work with the disabled student only
- persistent disruption of classes or other students' learning
- taking significant time away from the teacher's regular responsibilities
- putting the health or safety of other students at risk

The individual student's disability must always be judged against the ability of the Catholic school to address those needs in light of the school's financial, physical, and human resources.

## STAFF TRAINING

To successfully meet compliance issues in the schools, staff training should be carried on in the following areas:

- Reasonable accommodations: Teachers cannot use the excuse, "I don't discriminate because I treat everyone the same." Section 504 requires that disabled students have the chance to benefit from their educational placement, and schools must alter their educational practices and provide services to meet that need. Teachers must be made aware of the importance of accessible field trips, school events, and facilities. A trial court decision in West Virginia, *Doe v. Withers* (1993), illustrates the possible financial consequences for the regular educator who refuses to provide specified accommodations because he or she feels they are unnecessary. The teacher, who taught high school social studies, blatantly refused to provide the oral-testing accommodation listed in the Section 504 plan. A jury held the teacher personally liable to the student's parents for \$15,000 of compensatory and punitive damages and the parents' attorney fees.
- Policies and procedures specific to Section 504: Schools must be aware that the needs of disabled students should be covered in enrollment policies as well as in handbook procedures. Districts must offer specialized training in this important area to teachers, not just to administrators. It cannot be assumed that local schools will educate the staff; lawsuits often begin in the classroom with uninformed teachers.
- Access to Section 504 compliance officer: Every school district should have a person responsible for compliance issues. Teachers need support and guidance in dealing with this multi-faceted law; someone at the school board level should be available.
- Access to outcomes of Section 504 complaints and litigation: All schools should have access to OCR rulings available to update staff knowledge; perhaps teachers and building principals will be more cognizant of compliance issues. Having such information available only at the district office makes it extremely difficult for teachers and staff to effectively make use of it.

## CONCLUSION

Collis (1990) makes the point that, given our litigious society and a climate of parental questioning of school decisions, it should come as no surprise that frustrated individuals will continue to turn to the courts for redress. Section 504 has grown as a moving force both in public and private education law. Attorneys and advocacy groups are aware of its power; teachers and administrators must be educated about its compliance issues and sanctions.

Ignorance of mandates against discrimination of the disabled student is no excuse in today's courtrooms. Collis states it well: "An informed profession is a better profession. The teacher's presence is needed more in the classroom than in the courtroom" (p. 573).

## REFERENCES

- Bement (IL) Community Unit School No. 5, EHLR 353-383 (OCR 1989).  
 Benedictine (GA) Military School, 22 IDELR 531 (OCR 1995).  
 Board of Education of Nassau County v. Arline, 480 U.S. 273 107 S. Ct.1123 (1987).  
 Brittan (CA) School District, 16 EHLR 1226 (OCR 1990).  
 Civil Rights Act of 1964. 42 U.S.C. Section 2000(d).  
 Collis, J. (1990). *Educational malpractice: Liability of educators, school administrators, and school officials*. Charlottesville, VA: The Michie Company.  
 Doe v. Withers, 939 F.2d 204, 209 (4th Cir. 1993).  
 Education of the Handicapped Act, 20 USCA, Sec. 1400 *et seq* (1976).  
 Fairfield-Suisun (CA) Unified School District, EHLR 353: 205 (OCR 1989).  
 Gorn, S. (1998). *The answer book on Section 504*. Horsham, PA: LRP Publications.  
 Hunt v. St. Peter School, 26 IDELR 6 (W.D. Mo. 1997).  
 Jeffrey S. v. State Board of Education, (S.D. Ga. 1989) *vacated on other grounds*, 896 F. 2d 507 (11th Cir. 1990).  
*Letter of inquiry*. Inquiry of Williams, 21 EHLR 73 (OCR, 1994).  
*Letter to Zirkel*, 22 IDELR 667 (OCR, 1995).  
 Leyton, R. (1991). *Disciplining children with disabilities, IDELR Special Report No. 8*. Horsham, PA: LRP Publications.  
 McCracken County (KY) School District, 18 IDELR 482 (OCR 1991).  
 National Conference of Catholic Bishops. (1972). *To teach as Jesus did: A pastoral message on Catholic education*. Washington, DC: Author.  
 National Conference of Catholic Bishops. (1990). *In support of Catholic elementary and secondary schools*. Washington, DC: Author.  
*OCR letter of findings, 1990-1998*, IDELR Special Report No. 13. (OCR 1998).  
*OCR letter of response*, IDEL Special Report No. 7 (OCR 1994).  
*OCR memorandum*, 17 IDELR 609 (OCR 1991).  
 Ray v. School District, 666 F. Supp. 1524 (M.D. Fla. 1987).  
 Rialto (CA) Unified School District, EHLR 353: 201 (OCR 1989).  
 Rothschild v. Grottenthaler, 907 F. 2d 286 (2d Cir. 1990).  
 Salomone, R. C. (1986). *Equal education under law: Legal rights and federal policy in the post-Brown era*. New York: St. Martin's Press.  
 Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. Section 794 (1973).  
*Section 504 compliance advisor* (Supp. 193). (2000). Washington, DC: Thompson Publishing Group.  
 Senate Report No. 93-318, 94th Cong., 1st Sess. (1975).  
 Smith-Fess Act, Public Law 66-236 (56 Fed Reg. 35544-35691) (1920).  
 Thomas v. Davidson Academy, 662 F. Supp. 376 (C.D. Cal. 1994).  
 Zirkel, P. (1993). Section 504: The new generation of special education cases. *West's Education Law Reporter*, 85, 601.  
 Zirkel, P. (1994). *Section 504 and the schools*. Horsham, PA: LRP Publications.  
 Zirkel, P. (1997). Blurring the line between special and regular education. In *Section 504: Issues, analysis and cases* (p. 20). Horsham, PA: LRP Publications.

Nikki L. Schweinbeck, a retired administrator from Jefferson County Public Schools, is an adjunct professor in the Education Department and assistant director of international doctoral programs at Spalding University. Correspondence concerning this article should be addressed to Dr. Nikki L. Schweinbeck, Education Department, Spalding University, 851 S. Fourth St., Louisville, KY 40203.



Copyright of Catholic Education: A Journal of Inquiry & Practice is the property of Catholic Education: A Journal of Inquiry & Practice and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.